

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

RICHARD DZIONARA-NORSEN

Plaintiff,

v.

ANSWER

COUNTY OF MONROE, TODD BAXTER,
BRETT KIRKPATRICK, DAVID GERTIN,

Case 6:21-cv-06715-FPG

Defendants.

Trial By Jury Is Demanded

Defendants, County of Monroe, Sheriff Todd Baxter, Deputy Brett Kirkpatrick, and Deputy David Gertin, by and through their counsel, John P. Bringewatt, Monroe County Attorney, and Brian P. Green, of Counsel, answer Plaintiff's Complaint as follows:

1. Paragraphs 1, 10, 107, 119, and 128 contain legal conclusions or legal statements that do not require an answer, but to the extent that any answer is required, Defendants deny the allegations contained therein.
2. Deny the allegations contained in paragraphs 3, 4, 5, 13, 20, 38, 39, 43 – 48, 50, 51, 54, 71 – 80, 82 – 85, 87 – 92, 94 – 105, 111 – 117, 123 – 126, and 133 - 135 of the complaint.
3. Admit the allegations contained in paragraphs 7, 8, 11, 12, 14, 22, 23, 34, and 58 of the complaint.
4. Deny knowledge or information sufficient to form a belief as to the allegations contained in paragraphs 2, 6, 9, 15 – 19, 21, 24 - 33, 34 – 37, 40, 41, 42, 49, 52, 53, 55, 56, 57, 59, 60, 61, 62, 63, 64, 65, 108, 109, 110, 120, 121, 122, and 129 - 132.
5. Respond to paragraphs 66, 81, 86, 93, 106, 118, and 127 of the complaint as responded to elsewhere herein.

6. Join in Plaintiff's prayer for relief at paragraph a.
7. Deny Plaintiff's prayers for relief at paragraphs b - f.
8. Deny each and every other allegation contained in Plaintiff's complaint not specifically otherwise admitted, denied, or otherwise addressed herein.

AFFIRMATIVE DEFENSES

First Affirmative Defense

9. The Plaintiff's Complaint fails to state a claim against the Defendants upon which relief can be granted.

Second Affirmative Defense

10. The Defendants have qualified immunity from liability for damages for the counts and claims alleged in the Plaintiff's complaint.

Third Affirmative Defense

11. The Defendants did not authorize, condone, permit or ratify any improper or malicious conduct of any person, or adopt any policy condoning such conduct.

Fourth Affirmative Defense

12. Punitive damages cannot be awarded against the defendants.

Fifth Affirmative Defense

13. The damages alleged in the Complaint were caused in whole or in part by the acts or omissions to act of the plaintiff, which acts or omissions to act were negligent, reckless, wrongful, intentional or otherwise culpable.

If the plaintiff is entitled to recover damages as alleged in the Complaint, the amount of damages otherwise recoverable shall be diminished in the proportion which the culpable conduct attributable to the plaintiff bears to the culpable conduct which caused the damages.

Sixth Affirmative Defense

14. The Plaintiff has failed to mitigate his damages.

Seventh Affirmative Defense

15. In the event the Complaint is interpreted to state a cause of action based upon a theory of negligent hiring, education, training and/or supervision, the Complaint fails to allege sufficient facts to support such allegations against the County and should be dismissed.

WHEREFORE, the Defendants demand:

- A. A trial by jury;
- B. Judgment dismissing Plaintiff's complaint and all of its counts and claims, together with costs and disbursements;
- C. Such other and further relief as this Court may deem just and proper.

The Defendants demand a trial by jury.

John P. Bringewatt,
MONROE County Attorney
Attorney for the Defendants



Dated: January 7, 2022

Brian P. Green, Esq., of Counsel
Deputy County Attorney
307 County Office Building
39 West Main Street,
Rochester, New York 14614
Telephone: 585.753.1472
briangreen@monroecounty.gov